

* The original of this document contains information which is subject to withholding from disclosure under 5 U.S.C. 552. Such material has been deleted from this copy and replaced with XXXXXX's.

January 12, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 13, 2006

Case Number: TSO-0379

This decision concerns the eligibility of XXXXXXXXXXXX ("the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the Individual's access authorization should not be restored at this time.

I. APPLICABLE REGULATIONS

The regulations governing the Individual's eligibility for an access authorization, also referred to as a security clearance, are set forth in 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." An individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.* See generally *Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security" test indicates that "security clearance determinations should err, if they must, on the side of denials").

If a question concerning an individual's eligibility for a clearance cannot be resolved, the matter is referred to administrative review. 10 C.F.R. § 710.9. The Individual has the option of obtaining a decision by the manager at the site based on the existing information or appearing before a hearing officer. *Id.* § 710.21(3). If the Individual opts for a hearing, the Individual must present testimony and/or evidence to show that he is eligible for access authorization, i.e., that access authorization will not endanger the common defense and security and will be clearly consistent with the national interest." *Id.* § 710.27(a).

II. BACKGROUND

The Individual has been employed at a DOE facility in a position that requires him to hold an access authorization. He received his initial access authorization in 1979. During the background investigation for that access authorization, the Individual disclosed to DOE that he smoked marijuana approximately once every two weeks from 1975 to 1977. DOE Ex. 10. Based on that

information, the Individual was asked, and agreed, to sign a Drug Certification form certifying that he would not use any illegal drugs in the future. DOE Ex. 9. The Individual underwent three reinvestigations of his security clearance: in 1989, 1996, and 2002. DOE Ex. 6, 7, and 8. The Individual stated on the 1989 Questionnaire for Sensitive Positions (QSP) that he had not used any illegal substances in the past five years. DOE Ex. 8. On both the 1996 and the 2002 Questionnaire for National Security Positions (QNSP), the Individual reported that he had not used any illegal drugs while holding a security clearance. DOE Ex. 6 and 7. The Individual also reported on the 2002 QNSP that he sought treatment for an alcohol problem in 2002. DOE Ex. 6. Based on this information, the Individual was the subject of a personnel security interview (PSI) in April 2004. DOE Ex. 5.

During the PSI, the Individual discussed his alcohol problem and the steps he took to address it. Because the PSI did not resolve the security concerns created by his alcohol problem, the Individual was referred to a DOE consultant-psychiatrist ("the Psychiatrist") for an evaluation. The Psychiatrist interviewed the Individual in November 2005. During the interview, the Individual discussed his alcohol problem. The Individual also disclosed to the Psychiatrist that he used cocaine one time in 1985. Following his evaluation of the Individual's file and the interview, the Psychiatrist issued a report in December 2005.

In his report, the Psychiatrist determined that the Individual had been a user of alcohol habitually to excess from 2000 to 2001 and that the Individual met the criteria for "Alcohol Dependence Without Physiological Dependence in Early Full Remission" set forth in the Diagnostic and Statistical Manual 4th Ed., Text Revision, published by the American Psychiatric Association (the DSM-IV). The Psychiatrist also determined that the Individual's alcohol dependence was an illness which "causes or may cause a significant defect in the Individual's judgment or reliability, at least until such time as the Individual was showing adequate evidence of rehabilitation or reformation." DOE Ex. 3. The Psychiatrist found that at the time of his interview the Individual was not yet showing adequate evidence of rehabilitation or reformation. The Psychiatrist concluded that

As adequate evidence of rehabilitation, the [Individual] can do one of the following: (1) Produce documented evidence of attendance at Alcoholics Anonymous (AA) with a sponsor and working through all of the 12 steps with a sponsor at least once a week for a minimum of 200 hours over at least [two years] and be abstinent from alcohol and all non-prescribed controlled substances for a minimum of two years. [Or] (2) Satisfactorily complete a professionally run, alcohol treatment program, either inpatient or outpatient, including aftercare, for a minimum of six months and be abstinent from alcohol and all non-prescribed controlled substances for a minimum of three years.

* * *

As adequate evidence of reformation there are two options: (1) If the [Individual] goes through one of the two rehabilitation programs above, then a minimum of two or three years of abstinence from alcohol and all non-prescribed controlled substances is necessary to show adequate evidence of reformation. [Or] (2) If the [Individual] does not go through one of the two rehabilitation programs above, then

a minimum of five years of abstinence from alcohol and all non-prescribed controlled substances is necessary to show adequate evidence of reformation.

Id. The Psychiatrist added that any future use of alcohol or non-prescribed controlled substances would constitute evidence that the Individual is no longer showing adequate evidence of rehabilitation or reformation. *Id.*

In February 2006, the DOE notified the Individual that his alcohol problem, the Psychiatrist's diagnosis that the Individual was Alcohol Dependent, the Individual's 1985 use of cocaine despite his signing of a Drug Certification form in 1979, and his failure to report the cocaine use constituted derogatory information that created a substantial doubt as to the Individual's continued eligibility for an access authorization under 10 C.F.R. § 710.8(f), (h), (j), (k), and (l). (Criteria F, H, J, K, and L). Notification Letter, February 13, 2006. Upon receipt of the Notification Letter, the Individual requested a hearing in this matter. *See* Individual's Letter, March 21, 2006. The DOE forwarded the request to the Office of Hearings and Appeals (OHA). The OHA Director appointed me to serve as the hearing officer.

In his response to the Notification Letter, the Individual did not dispute the facts contained in the Notification Letter or that those facts give rise to the security concerns cited therein. The Individual specifically addressed the alcohol-related concerns. He stated in his response that he self-reported his treatment for his alcohol problem. He added that he underwent a twelve-week Intensive Outpatient Treatment Program (IOTP) for treatment of his alcohol problem, received counseling through the Employee Assistance Program (EAP) at the site, and was regularly attending AA and working on a twelve-step program with his sponsor. *Id.*

A hearing was held in this matter. Both the Individual and the DOE counsel submitted documents. At the hearing, the Individual, represented by counsel, presented his own testimony as well as the testimony of his supervisor, his daughter, his mother, and his Alcoholics Anonymous (AA) sponsor, to support his position that he was reformed and rehabilitated from his alcohol problem, was not a user of illegal drugs, and was honest, reliable, and trustworthy. The DOE counsel presented the testimony of one witness: the Psychiatrist.

III. THE HEARING

A. The Individual

The Individual testified regarding his drug use. He stated that he used cocaine once in 1984. Transcript ("Tr.") at 102. The Individual stated that he gave the Psychiatrist the incorrect date of his cocaine use. He stated that he informed the Psychiatrist that the cocaine use was about 20 years ago, but realized after thinking about it that the cocaine use was in 1984, not 1985. Tr. at 101. The Individual stated that he did not know why he tried the cocaine in 1984 and that he only used the substance that one time. Tr. at 104. The Individual stated that he was asked to sign a Drug Certification form in 1978 because of his prior use of marijuana in 1976 and 1977. Transcript ("Tr.") at 98. He stated that he had not seen the form since he signed it and had "probably forgotten about all the paperwork" he signed in 1978. Tr. at 98. He added that he knew what the form was when he signed it. Tr. at 99.

The Individual acknowledged that on the 1996 QNSP and the 2002 QNSP he answered “no” when asked if he had ever used illegal substances while holding a clearance. Tr. at 104. He stated, “I didn’t see it as a significant issue...it was only a one-time thing. I didn’t really dwell on the use of it or trying it.” *Id.* When asked if he read the question asking about drug use while holding a security clearance, the Individual stated that he “probably skimmed through it really quickly...I may have just overlooked it.” Tr. at 105. The Individual stated that he answered “no” on the 1989 QSP when asked if he had used any illegal drugs in the past five years. Tr. at 106. He stated that he answered “no” because the cocaine use was not within the five year period. He stated that he had used the cocaine in “March or April” of 1984 and he completed the QSP in June of 1989. *Id.* He stated that he answered the question on the QSP truthfully. *Id.* The Individual described his reasons for ultimately divulging his cocaine use to the Psychiatrist:

I had started with the IOTP...I had been doing my AA meetings and was learning more about myself and learning how important it was for me to be honest – rigorously honest with my faults and my past...It was just time it needed to come out. I mean, I’m glad I got it out there, just because it made me feel better about myself.

Tr. at 106-107. The Individual stated that he did not intentionally disregard DOE policies and that he would report the past cocaine use in any future reinvestigation of his clearance. Tr. at 153.

The Individual discussed in detail his alcohol problem and the steps he took to address it. Tr. at 107-134, 141-153. He stated that he initially realized he had an alcohol problem and needed help to address it in late 2001. Tr. at 141. According to the Individual, he contacted his primary care physician, who recommended a counselor. *Id.* The Individual attending alcohol counseling and was diagnosed as alcohol dependent. Tr. at 142. The Individual stated that he did not drink any alcohol from early 2002 until New Year’s Eve in 2002 when he had a few drinks. Tr. at 109. After New Year’s Eve in 2002, the Individual did not drink again until November 2003, when he had “a couple” of beers on Thanksgiving at his parents’ home. Tr. at 110, 143. The Individual then did not drink again until July 2005. He stated that at that time “things were starting to get a little stressful around [his] house, things were starting not to go well” and he drank regularly from the beginning of July 2005 until August 6, 2005 when he had his last drink. Tr. at 108. The Individual stated that he has remained abstinent from alcohol since August 6, 2005. Tr. at 110.

According to the Individual, in August 2005 when he realized that his alcohol use had become a problem again, he contacted both his primary care physician, who recommended that the Individual enroll in the IOTP, and his team leader who suggested that the Individual contact someone in the EAP. Tr. at 110-111. The Individual stated that he attended the IOTP for approximately 90 hours over 12 weeks. Tr. at 111. In addition, he met with an EAP counselor “ten to twelve times” and attended 40 AA meetings during that time. *Id.* The Individual added that after the IOTP ended in November 2005, he continued to attend AA meetings regularly until March 2006 when he suffered serious injuries in a car accident. Tr. at 114. He added that since completing the IOTP, he has attended 82 hours of AA and an additional 12 hours of meetings with his AA sponsor. Tr. at 130. The Individual stated that now that he is nearly recovered from his accident, he intends to continue attending AA meetings on a regular basis. Tr. at 121. The Individual stated that he also intends “to never drink [alcohol] again...because, as an alcoholic, it’s something that I can’t handle doing. I need to change my life and live my life in sobriety and

happiness and serenity and make sure that alcohol is not in my life ever again.” Tr. at 123. The Individual added that he believes he needs to continue his participation in AA in order to maintain his sobriety. *Id.*

The Individual spoke positively about his experiences in AA. He stated,

AA was an extremely big help to me and continues to be a big help to me, because of working the steps and talking with the people and meeting the people, and, you know, I’ve met a lot of really nice people through my AA meetings, and you know, to see them being honest and rigorous and working the program and trying to become better persons is just an inspiration for me, so that’s what I wanted in my life as well.

Tr. at 107. When asked if his experiences at AA made him more aware of the significance of his cocaine use, the Individual responded, “I think it made me more aware of the significance of just about everything.” *Id.* The Individual stated that he meets with his AA sponsor at least once per week and that they also contact each other by telephone or e-mail. Tr. at 133. According to the Individual, “it’s been quite a good experience.” *Id.*

The Individual concluded his testimony by stating that despite having had a difficult year involving personal and medical problems, he did not feel the desire to drink alcohol. He stated, “I have over a year of sobriety, which I am moving in the right direction. I’m learning how to live one day at a time, and that’s how I’ve been living my life.” Tr. at 150. He added, “[Alcohol is] not an issue. It’s just not something I’m thinking about...I know where I want to go in my life, and it’s forward, not backwards.” Tr. at 151.

B. The AA Sponsor

The Individual’s sponsor stated that he had been in AA for approximately 15 years and had sponsored several people. Tr. at 53. The sponsor stated that when he sponsors people, he “look[s] for responsibility, and, hopefully, not too much whining or vindictiveness towards other people” and that with the Individual he “see[s] a lot of responsibility.” Tr. at 60. The sponsor stated that in the time he has been working with the Individual, he has not noticed the Individual have any difficulty in participating in AA. Tr. at 55. The sponsor stated, “He uses me and he seems to use the program, as far as letting himself be helped and helping others...he participates in the program.” *Id.* The sponsor stated that he believed the Individual was committed to the AA program. He stated, “[The Individual] seemed committed. I could kind of see it in his willfulness that he reached out to me, he called me and asked [me to be his sponsor], which is an indication of his own commitment.” Tr. at 61. The sponsor stated that the Individual has been reliable in meeting with him and that they call each other to talk as well. Tr. at 62. The sponsor stated that he has talked with the Individual about whether he wants to drink alcohol. He stated, “so far the answer has been no, he’s just trying to work on being a single dad and getting his life back together.” Tr. at 63. The sponsor concluded, “[the Individual] is responsible. He knows he’s made some mistakes and he’s here to correct them and make them right.” Tr. at 64.

C. The Individual's Daughter

The Individual's daughter testified that she lived with her mother and often stayed with the Individual on weekends. Tr. at 82. She stated that the Individual never drank heavily around her, but that she had not seen him drink alcohol since he completed the IOTP. Tr. at 83, 84. She stated, "he seems a lot more...in tune to...helping himself and doing things for himself, realizing that, you know, maybe he wasn't happy before and that there [were] things in his life that maybe he could change." Tr. at 83. The Individual's daughter added, "I think that maybe...he realizes now that he needs to be his own first priority and that he needs to worry about making himself happy rather than worrying about everybody else so much." *Id.*

D. The Individual's Mother

The Individual's mother testified that alcohol did not appear to be a problem for him. Tr. at 89. She stated that she learned that the Individual had an alcohol problem when he informed her that he had sought treatment for it. Tr. at 89-90. The Individual's mother stated that she had not seen the Individual drink alcohol other than "one or two beers" on Thanksgiving "two or three years ago." Tr. at 93. She stated that she was surprised when the Individual told her that he had a drinking problem because he did not drink much in front of her. Tr. at 94.

E. The Individual's Supervisor

The Individual's supervisor stated that he had known the Individual for about 28 years and had been his supervisor since October 2005. Tr. at 40, 42. The supervisor had a favorable opinion of the Individual's work. He stated that the Individual was "very dependable at work." Tr. at 42. The supervisor stated that he did not have any concerns regarding the Individual's behavior at work or about the Individual's adherence to security regulations and requirements and that "it was a complete shock to [him]" when the Individual's clearance was suspended. Tr. at 43, 45. The supervisor stated that he never saw any evidence of substance abuse by the Individual. Tr. at 47. He added that the knowledge that the Individual answered questions on his QNSPs incorrectly did not affect his opinion of the Individual. Tr. at 48. He stated that he would describe the Individual as honest, reliable, and trustworthy, despite the Individual's incorrect answers on his 1996 and 2002 QNSP, and that he had no concerns about having the Individual reinstated to his work group. Tr. at 50.

F. The Psychiatrist

The Psychiatrist testified regarding his November 2005 evaluation of the Individual. As an initial matter, the Psychiatrist testified that he had no reason to believe that the Individual had used any illegal substances since his cocaine use. Tr. at 38. The Psychiatrist stated that he determined that the Individual had been a user of alcohol habitually to excess in 2000 to 2001 but was not currently using alcohol habitually to excess. Tr. at 12. The Psychiatrist added that he diagnosed the Individual as alcohol dependent because he met several criteria in the DSM-IV-TR.¹ *Id.* He

¹ According to the Psychiatrist, the Individual met criteria three, four, five, and seven for alcohol dependence in 2001. "Criterion three has to do with alcohol being taken in larger amounts...over a longer period of time than was intended. [Under c]riterion four, there is a persistent desire or unsuccessful effort to cut down or control the alcohol use. Criterion five is that there is a large amount of time spent consuming alcohol[.] Criterion seven...says that the

added that the Individual suffered from an illness – alcohol dependence – which may cause a defect in judgment or reliability, at least until the Individual showed adequate evidence of rehabilitation or reformation. Tr. at 21-22.

The Psychiatrist stated that the Individual was not showing adequate evidence of rehabilitation or reformation at the time of the evaluation. “[The Individual] had some treatment, some counseling, some AA meetings, but it wasn’t adequate[.]” Tr. at 14. The Psychiatrist stated that he made his recommendations for steps the Individual should take to demonstrate adequate evidence of rehabilitation and/or reformation, including abstinence from drinking alcohol and attending AA or a similar program. Tr. at 15. The Psychiatrist stated that there is evidence that “there is less of a probability of relapse” if a person is “actively involved in AA, working the 12 steps, having a sponsor, being at the meetings, in that supportive network[.]” Tr. at 16.

The Psychiatrist stated that he based his recommendations on the results of a large study of AA participants. Tr. at 20-21. According to that study, those who followed the AA program and remained abstinent for one year had about a 70 percent likelihood of remaining sober the following year; those who remained abstinent for two years had about an 80 percent likelihood of remaining sober during the following year; and those who abstained for three years had a 90 percent chance of remaining sober. Tr. at 20. The Psychiatrist stated that, based on these results, he usually recommends strict adherence to the AA program plus two years of abstinence as adequate evidence of rehabilitation.²

After listening to the testimony of the Individual and the other witnesses at the hearing, the Psychiatrist testified again. He stated that he had not changed his opinion regarding whether the Individual had demonstrated adequate evidence of rehabilitation or reformation. Tr. at 154. The Psychiatrist stated that he believed the Individual’s risk of relapse was “20 to 30 percent” and that he believed that in order to demonstrate adequate evidence of rehabilitation or reformation, the Individual’s risk of relapse should be only ten percent. Tr. at 155. He added, “if [the Individual] had another year of more AA, worked through more of the steps, more AA meetings, more meeting with the sponsor, a year from now, [his risk of relapse] would probably be 10 percent[.]” *Id.* The Psychiatrist concluded, “I think his prognosis is good[.]” Tr. at 163.

IV. STANDARD OF REVIEW

Under Part 710, the DOE may suspend an individual’s access authorization where “information is received that raises a question concerning an individual’s continued access authorization eligibility.” 10 C.F.R. § 710.10(a). After such derogatory information has been received and a question concerning an individual’s eligibility to hold an access authorization has been raised, the individual must demonstrate that “the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.27(a).

(*cont’d...*) alcohol is used despite a recurrent physical or psychological problem that’s caused or made worse by the alcohol.” Tr. at 12-13.

² Although he noted that the results of the study indicated that AA participants who abstained from alcohol use for two years would have a 20 percent chance of relapse during the following year, he believed that the people he evaluated are in a “better prognosis group” than the subjects of the study because “they are employed, they have clearances, they have incentives not to drink” and therefore their relapse rate would be lower. Tr. at 21.

Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. In considering derogatory information, the DOE considers various factors including: the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns. *Id.* § 710.7(c). The ultimate decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, both favorable and unfavorable to the individual. *Id.* § 710.7(A).

V. ANALYSIS

A. The Security Concerns

The derogatory information giving rise to the Criteria F, K, and L security concerns stems from the Individual's past drug use. Use of illegal drugs raises security concerns. *See* 10 C.F.R. Part 710, App. B; 66 Fed. Reg. 47069 ("Adjudicative Guidelines Approved by the President in Accordance with the Provisions of Executive Order 12968") ("Drug abuse or dependency may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information."); *Personnel Security Hearing, Case No. VSO-0113*, 25 DOE ¶ 85,512 (1995) ("The drug user puts his own judgment above the requirements of the laws, by picking and choosing which laws he will obey or not obey. It is further the concern of the DOE that the drug abuser might pick and choose which DOE security regulations he will obey or not obey with respect to protection of classified information."). In addition, drug use calls into question the user's judgment and reliability. *See, e.g., Personnel Security Hearing, Case No. VSO-0023*, 25 DOE ¶ 82,761 (1995) (stating that "any drug usage while the individual possesses a [security] clearance and is aware of the DOE's policy of absolute abstention demonstrates poor judgment."). It is also well-established that violation of a DOE Drug Certification form presents serious security concerns. *Personnel Security Hearing, Case No. VSO-0313*, 27 DOE ¶ 82,835 (2000). In addition to calling into question an individual's judgment and reliability, it raises concerns about the possibility of future drug use. Furthermore, the DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent that individual can be trusted again in the future. *See, e.g., Personnel Security Hearing, Case No. VSO-0013*, 25 DOE ¶ 82,752 at 85,515 (1995); *Personnel Security Hearing, Case No. VSO-0281*, 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000).

The derogatory information concerning Criteria H and J centers on the Individual's alcohol use and the Psychiatrist's diagnosis of alcohol dependence. It is beyond dispute that a diagnosis of alcohol abuse or dependence raises security concerns. *See, e.g., Personnel Security Hearing, Case No. VSO-0243*, 27 DOE ¶ 82,808 (2002).

The Individual did not dispute the facts cited in the Notification Letter or that those facts raised the security concerns cited in the letter. The only issue to be resolved, then, is whether the Individual has adequately mitigated the security concerns.

B. Mitigating Factors

Turning first to the Criterion K and L concerns raised by the Individual's 1984 cocaine use, I find that the Individual has adequately mitigated those concerns. My impression of the Individual, formed at the hearing, is that he is an intelligent, competent, and dedicated worker. It is clear that he recognizes the seriousness and significance of his actions and has no intention of using illegal drugs in the future. The Individual testified that his most recent illegal drug use occurred in 1984, over 22 years ago, and I believed his testimony. There is no evidence in the record to indicate that the cocaine use was not an isolated incident. In addition, the Psychiatrist, to whom the Individual first disclosed the cocaine use, testified that he had no reason to believe that the Individual has used illegal drugs since he used the cocaine in 1984. Moreover, the Individual obviously regrets, and appreciates the significance of, his violation of the DOE Drug Certification form. Although the Individual's violation of the Drug Certification form 22 years ago was a serious error, I believe it was an isolated incident and is highly unlikely to occur again in the future.

Turning to the Criteria H and J concerns raised by the Individual's admitted alcohol problem and the resulting diagnosis of alcohol dependence, I believe the Individual testified honestly when he stated that he intended to abstain from alcohol and continue to participate in AA and I am impressed by the significant positive changes he has made in his life. The Individual testified about his positive experiences in AA and his desire never to drink alcohol again. The Individual's AA sponsor corroborated the Individual's testimony about his commitment to his sobriety and the AA program. Additionally, the Psychiatrist was highly optimistic about the Individual's prognosis. Based on the testimony at the hearing and my own impressions of the Individual, I believe that he is showing substantial progress in addressing his alcohol problem and have no doubt that he will continue to do so.

In cases involving diagnoses of substance abuse or dependence, hearing officers accord much weight to the expert opinions of psychiatrists and other mental health professionals regarding the risk of relapse. *See, e.g., Personnel Security Hearing* (Case No. VSO-0146), 26 DOE ¶ 82,788 (1997) (affirmed by OSA, 1997); *Personnel Security Hearing*, (Case No. VSO-0027), 25 DOE ¶ 82,764 (1995); *Personnel Security Hearing*, (Case No. VSO-0015), 25 DOE ¶ 82,760 (1995). In this case, the Psychiatrist concluded that, at the time of the hearing, the Individual had a 20 to 30 percent chance of relapse. Given the Individual's progress and demonstrated commitment to maintaining his sobriety and continuing his participation in the AA program, I find no reason to question the Psychiatrist's assessment of the risk of relapse. However, I disagree with the Psychiatrist's conclusion that the Individual's demonstrated evidence of rehabilitation and reformation is inadequate.

As stated in guidelines issued by the White House for making security clearance determinations, various conditions may mitigate security concerns raised by an individual's alcohol consumption. *See* Guideline G of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House. Those conditions include that "the individual acknowledges his or her alcoholism or issues of alcohol abuse, and provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent)..." and that "the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of...abstinence

in accordance with treatment recommendations, such as participation in meetings of [AA] or a similar organization and has received a favorable prognosis by a duly qualified medical professional...” *Id.* ¶¶ 23(b) and 23(c).

In this case, the Individual demonstrated that he voluntarily sought help in treating his alcohol problem, has established a continuing pattern of abstinence with more than one year of sobriety at the time of the hearing, has completed an intensive 12-week outpatient alcohol treatment program, and has demonstrated his commitment to the AA program, including working individually with a sponsor. In addition, the Individual received a favorable prognosis from the Psychiatrist. Accordingly, the evidence presented by the Individual is consistent with the type of evidence of mitigation contemplated by the adjudicative guidelines. *See Id.* Based on this information, I find that the Individual has presented adequate evidence to successfully mitigate the Criteria H and J concerns. *See also Personnel Security Hearing* (Case No. TSO-0320), 29 DOE ¶ 82,920 (2006) (discussion of acceptable level of risk of relapse); *Personnel Security Hearing* (Case No. TSO-0410), 29 DOE ¶ 82,877 (2006) (finding 30 percent risk of relapse acceptable under particular circumstances of case).

The Criterion F concern – regarding whether the Individual falsified his 1989 QSP, 1996 QNSP and 2002 QNSP – is more difficult to mitigate. Criterion F concerns involve the future honesty and candor of an individual. In order to adequately mitigate these concerns, an individual has the difficult burden of convincing the hearing officer that he can be trusted to be honest and forthright with DOE in the future.

In this case, I believe the Individual’s testimony that he did not falsify his 1989 QSP. The Individual stated that his cocaine use occurred in 1984, rather than 1985 as reported by the Psychiatrist. Given that the cocaine use occurred many years ago, I believe the Individual’s testimony that he remembered incorrectly when he told the Psychiatrist that the cocaine use occurred “twenty years ago.” The Individual completed the QSP in June 1989. Since the question on the QSP asked whether the Individual had used an illegal substance “in the past five years,” and the Individual’s cocaine use occurred in “March or April” of 1984, his negative answer to the question was truthful. There is no dispute, however, that the Individual provided false answers on his 1996 QNSP and his 2002 QNSP. The Individual stated that he did not intentionally disregard DOE policies, but rather just “didn’t see it as a significant issue” because he only used the cocaine once and did not intend to do it again. This was a serious error and demonstrates a lapse in judgment by the Individual.

Based on the evidence in the record, and my impression of the Individual’s character, truthfulness, and reliability, I believe the Individual’s incorrect answers about an event that took place over 22 years ago were lapses in otherwise good judgment and that such a lapse in judgment is not likely to recur in the future. The Individual himself disclosed the cocaine use to the Psychiatrist. In addition, he has made several positive changes in his life and has emphasized the importance of honesty in his life. Furthermore, there is no evidence in the record of any other instances of the Individual being dishonest or falsifying information. However, the DOE has known about the false answers on the QNSPs for a relatively short time – eight months as of the date of the hearing.

Our previous cases have stated that a subsequent pattern of responsible behavior is of vital importance to mitigating security concerns arising from irresponsible behavior. *See Personnel*

Security Hearing, Case No. VSO-0499, 28 DOE ¶ 82,850 (2002). In most cases in which hearing officers have concluded that doubts about an individual's judgment and reliability raised by evidence of falsification have been resolved, a substantial period of time has passed since the falsification. In these cases, the time period has allowed individuals to establish a pattern of responsible behavior. In those cases where an individual was unable to establish a sustained period of responsible behavior, hearing officers have generally determined that the individual was not eligible to hold an access authorization. See *Personnel Security Hearing, Case No. VSO-0448*, 28 DOE ¶ 82,816 (2001) (11 months not sufficient to mitigate four year period of deception); *Personnel Security Hearing, Case No. VSO-0327*, 27 DOE ¶ 82,844 (2000) (less than one year of truthfulness insufficient to overcome long history of misstating professional credentials).

In the present case, the recent changes the Individual has made in his life, specifically his ongoing abstinence from alcohol, attendance at AA meetings, and focus on living an honest lifestyle, are all positive changes. However, Individual has not yet established a significant pattern of responsible behavior. Therefore, based on the recency of the DOE's knowledge of the falsifications and the short amount of time the Individual has had to demonstrate a subsequent pattern of responsible behavior, I cannot find that the security concerns associated with his falsifications have been mitigated. Accordingly, the security concerns set forth in the Notification Letter under Criterion F regarding the Individual's incorrect answers on his 1996 QNSP and 2002 QNSP remain unresolved. Accordingly, I believe that it would not be appropriate to restore the individual's access authorization at this time.

VI. CONCLUSION

Upon consideration of the record in this case, I find that there was evidence that raised a doubt regarding the Individual's eligibility for a security clearance under Criteria F, H, J, K, and L. I also find sufficient evidence in the record to fully resolve the concerns raised under Criteria H, J, K, and L. However, I am unable to conclude at this time that the concerns raised under Criterion F regarding the Individual's falsification of his 1996 and 2002 QNSPs have been resolved. Therefore, I cannot conclude that granting the Individual an access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, I conclude that the Individual's access authorization should not be granted at this time.

Diane DeMoura
Hearing Officer
Office of Hearings and Appeals

Date: January 12, 2007